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Supreme Court No. 98554-5
Court of Appeals No. 37097-6-III (consolidated)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In Re the Welfare of:

G.J.A., A.R.A., S.S.A., J.J.A., and V.A.

Minor Children,

C.A. (mother),

Petitioner/Appellant.

Spokane County Superior Court

Cause Nos. 17-7-02029-2, 17-7-02030-6,

17-7-01031-4, 17-7-02032-2, 17-7-02033-1

The Honorable Commissioner Michelle L. Ressa

Motion for Discretionary Review

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INTRODUCTION AND SUMMARY OF ARGUMENT

Rather than making active efforts to reunify C.A.'s Indian family, the Department of Children Youth and Family Services (the department) waited months to provide court-ordered services. The delay occurred despite repeated requests. Under these circumstances, the department did not meet its obligation to provide "active efforts" under the Indian Child Welfare Act (ICWA).

DECISION BELOW AND ISSUE PRESENTED

Petitioner parent C.A. asks this Court to review the Ruling Denying Review (entered January 23, 2020) and the Court of Appeals' Order Denying Motion to Modify (entered April 16, 2020).¹ This case presents a single issue: Did the department fail to make "active efforts" to prevent the breakup of this Indian family, as required by the state and federal Indian Child Welfare Acts?

STATEMENT OF THE CASE

C.A. is the mother of five children who are members of the Blackfeet Nation. AP 153. The family is the subject of dependency proceedings in Spokane County Superior Court.² AP 1. A termination trial is pending. AP 65.

Starting in March of 2019, the mother complained of the Department's failure to provide "active efforts" under the Indian Child Welfare Act (ICWA). AP 35, 43-44, 164; RP 9, 40-42, 50, 58-59, 63, 75-

¹ A copy of each decision is attached. AP 167-171.

² The mother and all five children live in the Tri Cities area, in Benton County. AP 57; RP 8, 26, 28-29, 31.

79. Her attorney identified three problem areas: family therapy, therapeutic visits, and a parenting assessment. AP 163.

Family therapy. Beginning in February of 2019, the mother repeatedly asked for a referral to family therapy. AP 7, 31, 32, 86, 155. At a review hearing in March, the mother reiterated her request for a referral. AP 7, RP 9. The court’s review hearing order (entered March 8, 2019) reflected a finding that “mother needs [a] referral” for family therapy. AP 11.

The Department did not make a referral for family therapy until May 30, 2019.³ AP 33, 60; RP 78, 89, 155. This occurred only after additional requests from the mother and her attorney. AP 31-33, 60, 86, 124, 126, 155.

The social worker did not take any action beyond making the referral. AP 59-62. Instead, as the court later found, the “[s]ocial worker has given mother the provider’s contact information and urged mother to stay in contact.” AP 22.

The mother met with the family therapist starting on June 14th without the children present.⁴ AP 32, 64, 158; RP 59. The counselor told the mother that “he does not typically do family therapy.” AP 33, 44; RP 56, 59, 68.

³ Although the social worker filled out a referral form following the March hearing, she did not submit the referral. AP 54, 64-65, 164-165; RP 86-87. She did not mention this or explain her reasoning to the mother’s attorney. AP 165; RP 100.

⁴ The family therapist planned to have only one of the five children present each week. AP 158.

Therapeutic visits. In late January and early February of 2019, the mother asked the social worker to set up visits with her children. AP 8, 31-32, 50, 155; RP 9. On February 8th, her attorney sent an email to the social worker asking for visitation. AP 31, 39, 51. The social worker did not respond. AP 31, 51.

The mother's attorney sent a second email on February 13th. AP 31, 38. The social worker refused to set up visitation, even after the court had ordered it. AP 31, 38.

The mother's attorney sent a third email on February 18th. AP 31, 37, 52. The social worker responded a week later, proposing contact through family therapy. AP 31, 37. Family therapy had already been ordered by the court; however, the social worker had yet to make a referral for family therapy.⁵ AP 31; RP 78, 89.

On February 28, the mother's attorney sent another email requesting family therapy and visits. AP 86. The social worker's only response was to report that the mother had refused (via text) to talk to her. AP 86. The mother believed that the social worker had violated her right to confidentiality.⁶ AP 51, 76, 86.

At the review hearing in March, the court ordered that "all contact will initially be in a therapeutic setting." AP 12. In its review hearing order, the court noted that "Department has not made referral." AP 8.

⁵ She did not make a referral until more than three months after she'd suggested that visitation take place during family therapy. AP 33, 60; RP 78, 89.

⁶ The mother's belief stemmed from a conversation the social worker had with the mother's employer and onetime housemate Mitchell S. AP 51, 76, 86.

Two months later, the Department had yet to make a referral for therapeutic visitation. AP 22, 27; RP 58, 79. In a permanency planning order entered on June 6, the court noted that the mother “has been asking for contact since Feb 2019.”⁷ AP 22.

A referral for therapeutic visits was not made until June 21.⁸ RP 79, 89; AP 62, 155. The first therapeutic visit took place on July 10, 2019. AP 63.

Parenting assessment. At the review hearing in March of 2019, the mother asked the Department to provide a referral for a parenting assessment. RP 9. The mother was court-ordered to participate in the service. AP 7, 11. The court noted that “mother needs referral.” AP 11.

The referral had still not been made when the parties returned to court for a permanency planning hearing in early June. AP 22. The court noted in its permanency planning order that “mother needs referral as one has not been made.” AP 22. Later in the order, the court again noted “referral needed.” AP 26.

The Department did not make a referral for the parenting assessment until June 11, shortly after the permanency planning hearing. AP 61, RP 79, 89. The social worker did not claim she made any efforts

⁷ Later in the order, the court reiterated that “mother has been requesting contact with children.” AP 22. The court followed this finding with a note that the Department had “filed motion to modify visits,” and that “family therapy not set up either.” AP 22.

⁸ In her declaration (dated July 16), the social worker did not document any efforts she made beyond submitting the referral. AP 62-63.

beyond submitting the referral (and sending emails to the mother and the provider). AP 61.

In August of 2019, the court held a hearing to determine whether the Department had satisfied its duty to make active efforts toward reunification. AP 164. The social worker filed a declaration in anticipation of the hearing. AP 46. She “strongly believed” that she had gone “above and beyond to reach out and serve the family.” AP 65.

The social worker admitted that she did not make a referral for the parenting assessment until after the June 6 permanency planning hearing. AP 61. She did not provide an explanation for the delay. AP 61. The Department’s attorney did not specifically address the issue at the hearing. RP 82-90.

The social worker admitted that no referral was made for therapeutic visits until after a hearing on June 20th.⁹ AP 62. She did not provide an explanation for the delay. AP 62. The Department’s attorney did not specifically address the issue at the hearing. RP 82-90.

The social worker admitted that she did not make a referral for family therapy until May 30th. AP 60. She acknowledged that she’d identified a family therapist in the Tri Cities area as early as March 8. AP 54. She completed a referral form on that date but did not submit it. AP 54. She blamed her failure in part on the mother’s “ever-changing needs.” AP 64.

⁹ A coworker initiated the referral on June 21 while the assigned social worker was on leave. AP 62.

The social worker did not outline the steps she'd taken to ensure the mother had appropriate services to address those "ever-changing needs." AP 64. Although the social worker helped the mother obtain sober housing following a relapse in April,¹⁰ she provided no further assistance when the mother was unable to afford the rent.¹¹ AP 104, 154.

After realizing she could not afford the sober housing placement arranged by the social worker, the mother returned to her own mother's home in Richland. AP 63, 124, 126, 154. In the absence of help from the social worker, she continued obtaining services on her own to address her mental health and addiction issues. AP 57, 59, 120, 124, 126, 144, 159; RP 9, 38-39.

Much of the social worker's declaration focused on an alleged "lack of consistent contact information." AP 64. She described this (along with the mother's "ever-changing needs") as "the biggest barrier" preventing the social worker from submitting a referral for family therapy.¹² AP 64.

¹⁰ In addition, when the mother asked for immediate help with detox, the social worker provided her with a bus pass, McDonald's cards, and a list of local resources for free meals. AP 56-57, 102.

¹¹ Initially, the social worker made clear that she expected the mother to obtain sober housing on her own. AP 105, 111.

¹² The social worker also complained that the mother lived in different places. AP 63. Apart from one period when she stayed with a person named Mitchell S., the mother lived either at the maternal grandmother's house or in treatment facilities and sober housing. AP 63.

One consistent point of contact was a landline at the maternal grandmother's home in Richland.¹³ AP 33-34, 42, 48, 58, 59, 60, 120, 124, 126, 141-143, 158; RP 79, 95. At the August hearing, the Department's attorney acknowledged that the social worker could have called the landline and left messages but did not. RP 83, 87, 90. On at least two occasions, the social worker tried to text the landline, and was discouraged by the lack of response. AP 58; RP 87, 88.

The State also acknowledged the social worker's failure to make referrals but argued that the "overall efforts" were active. RP 83. Counsel urged the court to take "a wholistic look" rather than focusing on "specific things that could have been done differently." RP 90.

At the conclusion of the hearing (and in a subsequent written order), the court ruled against the mother. AP 163-165; RP 95-101. The court did not address problems relating to the parenting assessment or therapeutic visitation. AP 163-165; RP 95-101.

Instead, the only service specifically addressed in the court's order involved the social worker's failure to make a timely referral for family therapy. AP 164-165. The commissioner was "not convinced anything would have come from the social worker clicking 'submit' on the family therapy referral." AP 164.

¹³ The mother (and her attorney) also provided the social worker other possible means of contact, including email addresses and a collection of cellphones which she warned were not as reliable as the message phone at the maternal grandmother's house. AP 32, 41, 50, 55-56, 59-60, 79, 92, 102, 120-121, 155, 159-160; RP 55.

According to the court, making the referral would amount to “setting up the mother for likely failure.”¹⁴ AP 165. However, the court acknowledged that “the reasons for not submitting the referrals should have been communicated” to the mother and her attorney. AP 165; RP 100.

The court found that the Department made “active efforts.” AP 163-165. The mother sought discretionary review. AP 161. Court of Appeals Commissioner Wasson issued a Ruling Denying Review on January 23, 2020. AP 167. The court denied her Motion to Modify on April 16, 2020. AP 171. The mother seeks discretionary review of the Court of Appeals’ decision.

ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

I. THE DEPARTMENT DID NOT PROVIDE “ACTIVE EFFORTS” TO PREVENT THE BREAKUP OF THIS INDIAN FAMILY.

Despite court orders and requests from the mother and her attorney, the Department waited months to provide referrals for family therapy, therapeutic visitation, and a parenting assessment. The mother engaged in services as soon as the referrals were provided.

The Department did not make “active efforts” to prevent the breakup of this Indian family. It did no more than provide untimely referrals for court-ordered services after months of requests from the mother and her attorney.

¹⁴ The court surmised that the family would “los[e] access to another service provider” if the social worker had made the referral. AP 164-165.

- A. To prevent the breakup of an Indian family, the Department must make “active efforts” consisting of more than timely referrals for services.

Under the Indian Child Welfare Act, the Department must make “active efforts” to prevent the breakup of an Indian family. 25 U.S.C. §1912(d); RCW 13.38.130(1). This requires the Department to “make timely and diligent efforts” to provide services.¹⁵ RCW 13.38.040(1)(a); *see also Matter of Welfare of A.L.C.*, 8 Wn.App.2d 864, 875, 439 P.3d 694 (2019).

The Department must “take a more proactive approach with clients and actively support the client in complying with the service plan rather than requiring the service plan be performed by the client alone.” *Matter of D.J.S.*, --- Wn.App.2d ---, ___, 456 P.3d 820 (2020). Rather than “simply developing a plan for the parent to follow, active efforts require that a caseworker actually help the parent develop the skills required to keep custody of the children.” *Id.*

In *A.L.C.*, the Court of Appeals reversed an “active efforts” finding. *A.L.C.*, 8 Wn.App.2d at 875. It concluded that the Department “provid[ed] no referrals or [made] untimely referrals.” *Id.* The Department had delayed six weeks before providing a referral for one service, and several months regarding other services. *Id.*

Similarly, in *D.J.S.*, the Court of Appeals concluded that the Department did not provide active efforts. *D.J.S.*, ---Wn.App.2d at ____.

¹⁵ *See also* 25 C.F.R. §23.2 (Such efforts must be “affirmative, active, thorough, and timely.”)

The court faulted the social worker for failing to take the father to services and ensure that he was provided the assistance he needed. *Id.*

The court also pointed out that “when a parent fails to engage satisfactorily with a caseworker, the caseworker still must try to engage the parent.” *Id.* It reiterated that “[a]ctive efforts means more than just making referrals.” *Id.*

This case is controlled by *A.L.C.* and *D.J.S.* As in those cases, the Department failed to provide active efforts to reunify this Indian family. *Id.*

- B. Instead of making “active efforts,” the Department provided untimely referrals with no additional assistance.

To meet its obligations, the Department must do more than “simply providing referrals to [remedial] services.” RCW 13.38.040(1); *see also D.J.S.*, ---Wn.App.2d at _____. Instead, “active efforts must involve assisting the parent... through the steps of a case plan and with accessing or developing the resources necessary to satisfy the case plan.” 25 C.F.R. §23.2.

In this case, the Department did not make active efforts toward reunification. In fact, it did not even provide timely referrals. *See* RCW 13.38.040(1).

First, the Department failed to make active efforts regarding family therapy. The mother requested family therapy in February and at the March review hearing. AP 7; RP 9. The court’s March 8th order reflects the mother’s need for a referral. AP 11.

The mother made additional requests, but no referral was made until more than two months after entry of the court's order.¹⁶ AP 33, 60, 155; RP 78, 89. In addition, when the mother was finally provided the service, the therapist told her that "he does not typically do family therapy." AP 33, 44; RP 56, 59, 68.

Second, the Department failed to make active efforts relating to therapeutic visitation. The mother requested visitation in January and repeatedly thereafter. AP 8, 31-32, 37-39, 50-52, 86, 155; RP 9. In March, the court ordered therapeutic visits and noted the need for a referral.¹⁷ AP 8, 12. The Department waited three months, after entry of another order, to make the referral. AP 22, 62, 155; RP 79, 89.

Third, the Department failed to make active efforts to provide a parenting assessment. The mother asked for a referral at the March review hearing, and the court noted the need for a referral in its order. RP 9, AP 11. The Department did not make a referral until three months later, after entry of an additional order noting the need for a referral. AP 22, 26, 61; RP 79, 89.

The Court of Appeals did not specifically address the mother's arguments regarding the social worker's failure to go beyond making untimely referrals. Ruling, pp. 3-4.

¹⁶ This is especially egregious given the social worker's suggestion that family therapy should substitute for regular supervised visitation. AP 31, 37.

¹⁷ The court reiterated this order in its June permanency planning hearing. AP 22.

The Department waited two months to provide the referral for family therapy and three months to provide referrals for therapeutic visitation and a parenting assessment. As in *A.L.C.*, “[b]y providing... untimely referrals, the department failed to make active efforts.” *Id.*

The Supreme Court should accept review, reverse the Court of Appeals decision, and vacate the trial court’s “active efforts” finding. *Id.*

C. The social worker did not actively work with the mother to “engage” her in services.

In ICWA cases, the State must show that the Department “actively worked with the parent... to engage them in remedial services and rehabilitation programs.”¹⁸ RCW 13.38.040(1)(a)(ii). Under the statute, “when a parent fails to engage satisfactorily with a caseworker, the caseworker still must try to engage the parent.” *D.J.S.*, ---Wn.App.2d at ____.

This obligation to “engage” the mother required efforts to overcome obstacles, including any posed by the mother’s issues. The Department did not prove that it “actively worked with [the mother]” to engage her in services. RCW 13.38.040(1)(a)(ii).

According to the social worker, the mother’s “ever-changing needs” created a barrier that prevented the Department from making referrals. AP 64. These “needs” (apparently) included the mother’s initial opposition to services, her struggles with addiction, and medical issues.

¹⁸ See also RCW 13.38.040(1)(a) (The Department must “make timely and diligent efforts... including engaging the parent... [in] services.”)

AP 64. None of these should have prevented the social worker from making timely referrals for court-ordered services.

First, by the time of the review hearing in March, the mother had overcome any opposition she had to services. She asked the Department to make the necessary referrals.¹⁹ AP 7-8, 11, 31, 33, 86, 155; RP 9. Despite this, the social worker waited two to three months to make any of the referrals. AP 22, 26, 60-63, 155; RP 79, 89.

Second, although the mother struggled with addiction and relapse, the social worker did little to ensure the mother's recovery. On her own, the mother obtained chemical dependency treatment.²⁰ AP 57, 59, 120, 126, 144, 159; RP 9, 38-39. When the mother was in acute need following a relapse, the social worker provided only a bus pass and minimal food assistance.²¹ AP 56-57, 102. Later, the social worker helped find sober housing that the mother could not afford. AP 154.

Third, nothing prevents service referrals for someone who is "in and out of the hospital." AP 64. This is especially true given that the only hospitalization mentioned by the social worker occurred "at the end of January" during her first contact with the mother. AP 64.

¹⁹ There is no indication the social worker sought to overcome any lingering reluctance by building trust.

²⁰ She also sought and obtained mental health treatment on her own. AP 124, 126, 144; RP 8-9, 38-39.

²¹ In the form of McDonald's cards and a list of local resources. AP 56-57, 102.

The mother's "ever-changing needs"²² presented an opportunity for the Department to show its commitment to active efforts. Instead of taking this opportunity, the social worker decided the mother's needs created a barrier that prevented her from even providing referrals. AP 64.

The social worker also complained of a "lack of consistent contact information." AP 64. But the social worker's declaration outlines consistent contact—either directly or through the mother's attorney²³—except for the nine days preceding April 18, when the mother sought help for her relapse. AP 49-63.

Furthermore, the obligation to communicate does not rest with an Indian child's parent. Instead, the Department must overcome barriers to communication as part of its duty to provide "affirmative, active, thorough, and timely efforts." 25 C.F.R. §23.2.

Here, the social worker acknowledged that she did not "reach out" to the mother after holding back a referral for family therapy.²⁴ AP 55, 157. This was so even though the social worker had been provided a new telephone number to try. AP 55. The social worker's failure to "reach out" establishes that the Department did not "actively work[] with the parent...

²² AP 64.

²³ The mother refused direct contact after February 4th because she believed the social worker had violated her right to confidentiality. AP 51, 76, 86.

²⁴ It appears that the social worker also failed to "reach out" during November, December, and much of January, despite having access to "the Department's parent locator." AP 48.

to engage [her] in remedial services and rehabilitation programs.”²⁵ RCW 13.38.040(1)(a)(ii).

In addition, the social worker had a reliable method for reaching the mother through messages left with the maternal grandmother. AP 33-34, 42, 48, 49, 58, 59, 60, 120, 124, 126, 141-143, 158; RP 61, 79, 95. The very first telephone call the social worker made was to the grandmother. AP 49. The grandmother confirmed that C.A. stays in the house periodically.²⁶ AP 49.

The mother and her attorney also provided the social worker several cellphone numbers. AP 32, 41, 50, 55-56, 79, 92, 102, 120, 155, 159-160. The mother “only provided multiple numbers because [the social worker] continue[d] to state she can’t reach me.” AP 159. The mother’s goal in sharing these numbers was to provide “the maximum amount of ways to reach me.” AP 159.

The mother’s cellphones had limitations – one phone belonged to the father, another was a text-only phone that required a wifi connection, another suffered from poor reception. AP 59-60, 120-121, 160; RP 55. The mother never suggested that the social worker could rely exclusively on those phone numbers to reach her.

²⁵ In addition, the social worker apparently failed to recognize that a lack of trust interfered with the mother’s willingness to contact the Department, even as the mother maintained consistent contact with her attorney. *See, e.g.*, AP 50, 82 (mother served with termination petition when she went to pick up Visa cards); AP 51, 76, 86 (mother believed social worker violated her right to confidentiality). The social worker did not take this into account when she insisted on a “verified” phone number before providing a referral. AP 54.

²⁶ In her first contact with the social worker, the mother gave her the grandmother’s address as a way to contact her. AP 76.

If the social worker was unable to reach the mother through these cellphones, she should have called the grandmother's landline. Instead, it appears she relied on them as her primary means of reaching the mother. Often, the social worker called or texted only one number, rather than trying multiple numbers.²⁷ AP 53, 56, 77-78, 90, 97.

Furthermore, it does not appear that the social worker explored alternatives that might have allowed for more consistent communication. For example, the social worker could have emailed the mother every time she was unable to reach her.²⁸ *See* AP 34, 160. The social worker could have asked the mother's attorney to facilitate contact (instead of merely asking her for updated phone numbers and complaining about lack of contact).²⁹ AP 41, 53. The social worker might also have contacted the mother through Facebook Messenger (as the mother's attorney suggested), even if that avenue was not appropriate for communication with service providers. *See* AP 55, 156-157.

Any difficulty in communicating with the mother establishes the Department's failure to make active efforts. The social worker should have worked to overcome barriers to communication as part of the Department's duty to "engage" the mother in services. 13.38.040(1)(a)(ii).

²⁷ It was not until June 20th that the Department offered to help the mother get a more reliable cellphone. RP 54.

²⁸ The social worker sent few emails to the mother. When she did email, she was able to communicate with the mother shortly thereafter, whether by email or by phone. *See* AP 48-50, 59, 60, 61, 63. The only exception appears to have been just before the mother asked for help regarding her relapse. AP 55, 56, 96.

²⁹ The mother often communicated with her attorney via Facebook Messenger to avoid using minutes on her cell phone. AP 55, 157.

The Court of Appeals did not specifically address the Department's failure to engage the mother in services. Ruling, pp. 3-4.

The Department did not show that it actively worked with the mother to ensure that she engaged in services. It failed to make active efforts toward reunification, in violation of 25 U.S.C. §1912(d) and RCW 13.38.130(1). The trial court's order on active efforts must be reversed.

II. THE COURT OF APPEALS' OBVIOUS ERROR HAS RENDERED FURTHER PROCEEDINGS USELESS.

The Supreme Court will accept discretionary review "if the Court of Appeals has committed an obvious error which would render further proceedings useless." RAP 13.5(b)(1). Here, the Court of Appeals committed obvious error by declining review. Its decision left intact the trial court's refusal to ensure compliance with the state and federal Indian Child Welfare Acts.

The Department did not make active efforts to prevent the breakup of this Indian family. Instead, it waited months to provide referrals for court-ordered services, including family therapy, therapeutic visitation, and a parenting assessment. *See A.L.C.*, 8 Wn.App.2d at 875. In addition, it did not actively work to overcome perceived obstacles to the mother's engagement in services. RCW 13.38.040(1)(a)(ii).

The appellate court's obvious error renders further proceedings useless. The trial court's orders—including any future termination order—

will be vulnerable to attack under 25 U.S.C. §1914.³⁰ That statute permits an Indian parent to petition any court of competent jurisdiction to invalidate any action taken in violation of the Indian Child Welfare Act. 25 U.S.C. §1914.

The case is scheduled for a termination trial. AP 65. If the trial is held, the court will be required to determine if the Department provided “active efforts.” RCW 13.38.130(1). The social worker failed to “engage” the mother in services; instead, she did no more than provide untimely referrals. As a matter of law, the facts outlined in the record below are insufficient to show active efforts. *A.L.C.*, 8 Wn.App.2d at 875; *D.J.S.*, --- Wn.App.2d at ____.

The Supreme Court should accept review under RAP 13.5(b)(1). The court should reaffirm that untimely referrals for services do not amount to active efforts under the state and federal Indian Child Welfare Acts. *A.L.C.*, 8 Wn.App.2d at 875; 25 U.S.C. §1912(d); RCW 13.38.130(1).

The trial court’s order must be reversed. The Supreme Court should remand the case for entry of a finding that the department failed to make active efforts. *Id.*; 25 U.S.C. §1912(d); RCW 13.38.130(1).

³⁰ See also RCW 13.38.190(2) (“Nothing in this chapter shall affect, impair, or limit rights or remedies provided to any party under the federal Indian child welfare act, 25 U.S.C. §1914.”)

III. THE COURT OF APPEALS' PROBABLE ERROR SUBSTANTIALLY LIMITS THE MOTHER'S FREEDOM TO ACT.

The Supreme Court will accept review “if the Court of Appeals has committed probable error and the decision of the Court of Appeals substantially alters the status quo or substantially limits the freedom of a party to act.” RAP 13.5(b)(2).

Here, the Court of Appeals committed probable error by leaving intact the trial court's decision. The trial court failed to ensure compliance with the state and federal Indian Child Welfare Acts. The Department did not make active efforts to prevent the breakup of this Indian family. Instead, the Department did no more than make untimely referrals for services. *Id.* It also failed to actively work to overcome any alleged obstacles to the mother's engagement. RCW 13.38.040(1)(a)(ii).

The appellate court's probable error substantially limits the mother's freedom to act. The Department has not made active efforts to reunify this Indian family. The mother cannot compel the Department to provide active efforts. She should not be required to seek reunification without the support mandated by state and federal law.

The Supreme Court should accept review under RAP 13.5(b)(2). The court should reverse the trial court's order and remand for entry of a finding that the Department failed to make active efforts to prevent the breakup of this Indian family. *Id.*; 25 U.S.C. §1912(d); RCW 13.38.130(1).

CONCLUSION

The trial court ordered the Department to provide a parenting assessment, family therapy, and therapeutic visitation. The mother and her attorney repeatedly requested referrals for these court-ordered services. The court noted the need for referrals in its orders. Despite this, the Department waited months to refer the mother for any of these services.

Apart from providing untimely referrals, the Department did nothing to engage the mother in services. Nor did the Department make other efforts toward reunification. Although the social worker complained of a “lack of consistent contact information,” she did not take advantage of available methods for communicating with the mother.

The Department’s actions do not qualify as “active efforts” under the state and federal Indian Child Welfare Acts. The Court of Appeals committed obvious or probable error. It should have accepted review and reversed the trial court’s decision. The Supreme Court should accept review, reverse the trial court’s order, and remand with instructions to enter a finding that the Department failed to make active efforts toward reunification.

Respectfully submitted on May 15, 2020.

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CERTIFICATE OF SERVICE

I certify that on today's date, I mailed a copy of Appellant's Motion for Discretionary Review to:

C.A. (address confidential)

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Motion electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.



Jodi R. Backlund, No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

May 15, 2020 - 8:56 AM

Transmittal Information

Filed with Court: Court of Appeals Division III
Appellate Court Case Number: 37097-6
Appellate Court Case Title: In re the Dependency of: G.J.A.
Superior Court Case Number: 17-7-02029-2

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